

1992

## Baker v. Baker : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO.

920314

IN THE UTAH STATE COURT OF APPEALS

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DAN BAKER,

:

Plaintiff/Appellee, :

vs.

:

Case No. 920314-CA

LUJUANA BAKER,

:

Priority No. 16

Defendant/Appellant.:

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BRIEF OF APPELLEE

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This is an appeal from the Third District Court's  
Judgment and Decree of Divorce entered in Salt Lake  
County, State of Utah on or about April 16, 1992.

The Honorable David S. Young, Presiding

---

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**FILED**

SEP 18 1992

**COURT OF APPEALS**

IN THE UTAH STATE COURT OF APPEALS

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DAN BAKER, :  
Plaintiff/Appellee, :  
vs. : Case No. 920314-CA  
LUJUANA BAKER, : Priority No. 16  
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BRIEF OF APPELLEE

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### JURISDICTION OF APPELLATE COURT

This court has jurisdiction over this matter pursuant to §78-2a-3(2)(h), Utah Code Ann. (1953) and pursuant to Rules 3 and 4 of the Utah R. App. P.

### ISSUES FOR REVIEW

The Brief of Appellant adequately states the issues presented for review.

### STANDARD OF REVIEW

With respect to the issues presented for review, defendant asserts that the trial court abused its discretion. Trial courts have considerable discretion in divorce cases in determining alimony and property distribution in divorce cases, and will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated. Howell v. Howell, 806 P.2d 1209, 1211 (Utah App. 1991). Further, findings of fact in divorce appeals are subject to the clearly erroneous standard of review. Id. The trial court's factual determinations are clearly erroneous only if they are in conflict with the clear weight of the evidence, or if the appellate court has a definite and firm conviction that a mistake has been made. Cummings v. Cummings, 821 P.2d 472, 476 (Utah App. 1991).

### DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, RULES, ETC.

There is no statutory authority believed by plaintiff to be wholly determinative of the issues raised on appeal.

However, the interpretation of §78-45-7.12 Utah Code Ann., quoted below, is determinative with respect to child support:

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount may be ordered, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

#### STATEMENT OF THE CASE

The Brief of Appellant provides an adequate statement of the case.

#### STATEMENT OF THE FACTS RELEVANT TO THE ISSUES PRESENTED

With the exception of the following additional facts, the Brief of Appellant provides an adequate statement of the facts.

Defendant testified that her monthly expenses are \$4,800.00 per month, excluding her car payment which is \$396.00, for a total of \$5,196.00 per month. (FOF, p.3, ¶8, index 88) Defendant testified that those expenses include the expenses attendant to herself, her two children, and the two grandchildren residing in her home. (FOF, p.3, ¶8, index 88) The trial court found that the expenses related to the two grandchildren are not relevant to, nor should they be considered in, the court's award of alimony and child support. (FOF, p.3, ¶8, index 88) Defendant offered no evidence at trial as to her needs and expenses excluding and independent of the two grandchildren residing with her.



The trial court determined the assets and liabilities of the parties, accumulated and incurred during the marriage and outstanding, and made a division thereof, all as provided in paragraph 13 of the Findings of Fact. (FOF, p.5, ¶13 to p.6, index 90-91)

The trial court found that the obligation set forth in subparagraph (r) of paragraph 13 of the Findings of Fact, which is a loan repayable to plaintiff's parents in the amount of \$94,389.00 (which does not include any interest), is a marital debt of the parties which must be considered in the division of the marital estate and which accordingly reduces the marital net worth of the parties to a negative net worth. (FOF, p.6, ¶14, index 91) The debt was incurred from time to time commencing in 1984 and some payments have been made thereon as evidenced by Defendant's Exhibit 3. (FOF, p.6, ¶14, to p.7, index 91-92)

The trial court found that since plaintiff was charged with the responsibility for repayment of that debt to plaintiff's parents, the division of the marital net worth, as provided for in paragraph 13 of the Findings of Fact, left plaintiff with a negative net worth of \$43,637.00, while the assets being awarded to defendant have a positive net worth of \$17,500.00. (FOF, p.7, ¶14, index 92) The Court found that imbalance to be necessary and equitable because at the time of trial plaintiff was the only party who had earnings with which the liabilities of the parties could be paid. (FOF, p.7, ¶14, index 92)

The trial court found that because of the substantial debt of the parties and the resulting negative net worth, the parties could not afford to maintain and make the mortgage payments on the marital residence at 11718 S. Eureka Way and ordered the sale of the same at the earliest possible time. (FOF, p.8, ¶17, index 93)

#### SUMMARY OF ARGUMENTS

The trial court carefully and fully considered the evidence presented at trial concerning the parties' financial situation. After doing so, the trial court specifically found that the parties cannot afford to maintain and make the mortgage payments on the marital residence and ordered it sold at the earliest possible time. The trial court found that the parties have substantial debt. If plaintiff were to be awarded the marital home, plaintiff's equity would be tied up and unavailable to pay the marital debts, almost all of which were assigned to him. Financial considerations alone are sufficient justification to order the sale of a marital home. The record contains ample evidence to show that the trial court did not abuse its discretion in ordering the sale of the marital home.

The child support for two children at the maximum income level of \$10,000.00 set forth in the statutory child support table is \$1,400.00 per month. Defendant claims that the appropriate child support for the two minor children is \$1,750.00 per month and arrived at that sum by applying fourteen percent

(14%) (which is the percentage applied to the \$10,000.00 statutory maximum) to plaintiff's gross monthly income of \$12,510.00. That approach is flawed because it does not consider the fact that as gross income increases, the percentage of income required for child support decreases. If the statutory child support table were extrapolated, plaintiff's monthly child support obligation would be \$1,500.00 per month. The trial court, however, went further and awarded \$1,600.00 per month.

In awarding child support, the trial court: (i) considered defendant's testimony regarding monthly expenses, (ii) found that the amount of \$1,600.00 included some surplus costs for the children, (iii) found that plaintiff's gross income was \$150,120.00, and (iv) found that plaintiff was not employed. In doing so, the trial court acted consistently with statutory requirements. Because the trial court acted within statutory law and made appropriate findings, the trial court did not err in setting child support at \$1,600.00 per month. Further, the record contains ample evidence to show that the trial court did not abuse its discretion in establishing that level of child support.

In awarding alimony, the trial court expressly considered (i) the financial conditions and needs of the wife, (ii) the ability of the wife to produce a sufficient income for herself, and (iii) the ability of the husband to provide support. Further, the trial court made detailed findings of fact on each

factor. After considering all the relevant evidence, the trial court awarded defendant \$3,000.00 per month after tax income (\$1,400.00 in alimony and \$1,600.00 per month in child support) and left plaintiff with after tax spendable income of \$2,884.00 per month. This division has to the extent possible equalized the parties' respective standards of living. Accordingly, the trial court did not abuse its discretion in the award of alimony.

Because plaintiff does not have a common law or statutory duty to support the minor grandchildren, plaintiff should not be required to do so, whether the support is labeled as "child support" or "alimony." As such, the trial court did not err by not considering those expenses in awarding child support and alimony.

Because defendant received substantially more than one-half ( $\frac{1}{2}$ ) of the parties' net worth, defendant's assertion that the trial court abused its discretion and treated her unfairly is totally without merit.

The record contains substantial evidence to support the trial court's determination that the parties have a liability to plaintiff's parents in the amount of \$94,389.00. That evidence is legally sufficient to support the trial court's factual determination regarding the existence of that marital liability to plaintiff's parents. The trial court's determination regarding this debt is not clearly erroneous because it is not against the clear weight of the evidence.

Defendant's complaint that the trial court made no order relating to the maintenance of the debt to plaintiff's parents is without merit. The trial court assigned this debt to plaintiff and ordered him to save and hold defendant harmless therefrom.

In the event that plaintiff substantially prevails on appeal, the Court should award plaintiff his attorneys' fees and costs on appeal.

#### **ARGUMENT**

**POINT I:           THE TRIAL COURT DID NOT ABUSE ITS  
DISCRETION OR ERR IN ORDERING THE  
SALE OF THE MARITAL RESIDENCE.**

Defendant asks this court to award the use and possession of the marital residence to defendant until the children attain their majority or until defendant's remarriage or cohabitation. In part, defendant justifies this request by arguing that there are sufficient funds to pay the mortgage obligation. Defendant is wrong.

In its Findings of Fact, the trial court specifically found:

1. Plaintiff is employed (FOF, p.2, ¶6, index 87).
2. Defendant is unemployed (FOF, p.3, ¶7, index 88).
3. The parties have negative net worth (FOF, p.6, ¶14, index 91).
4. The parties have substantial debt (FOF, p.8, ¶17, index 93).

Because plaintiff is employed, and defendant is not, the trial court ordered plaintiff to pay virtually all of the marital debts. Specifically, the Decree of Divorce, a copy of which is attached hereto as Appendix A, orders plaintiff to "pay and discharge the following . . . debts and obligations and shall save and hold the Defendant harmless therefrom:

- a. K-plus loan no. 1 owing to Pacific Power (1,762.00)
- b. K-plus loan no. 2 owing to Pacific Power (926.00)
- c. Loan payable to Mr. and Mrs. Paul Baker (94,389.00)
- d. Loan payable to Pacific Power (6,700.00)
- e. Payable to Dr. Hicks (560.00)
- f. Payable to Olivette Furniture (2,000.00)
- g. Plaintiff's attorney's fees and costs incurred in this action
- h. Payable to Defendant's attorney in this action to apply upon attorney's fees and costs incurred by the Defendant in this action (2,500.00)
- i. The Plaintiff shall pay and discharge all debts and liabilities incurred by him since the separation of the parties in May, 1991, and not otherwise provided for herein and he shall save and hold the Defendant harmless therefrom."

(DOD, p.9, ¶15 to p.10, index 104-05) The Decree of Divorce also awarded plaintiff (i) the marital residence subject to the \$143,000.00 mortgage thereon (except as otherwise provided) (DOD, p.6, ¶9 to p.7, index 102), (ii) a 1991 GMC subject to the debt

thereon in the approximate amount of \$19,000.00 (DOD, p.8, ¶14, index 103), and (iii) a 1989 Ford Bronco subject to the debt thereon in the approximate amount of \$10,800.00 (DOD, p.8, ¶14, index 103). Further, the Decree orders plaintiff to pay to defendant child support in the amount of \$1,600.00 per month (DOD, p3, ¶3, index 98) and alimony in the sum of \$1,400.00 per month (DOD, p.4, ¶5, index 99). As is evident from the foregoing, plaintiff has substantial monthly obligations.

Plaintiff's monthly cash flow is set forth in Plaintiff's Exhibit 2, a copy of which is attached hereto as Appendix B. Plaintiff's Exhibit 2 shows that the net monthly cash available to plaintiff is \$2,834.00. Plaintiff's Exhibit 2 also shows that the net monthly cash available to defendant is \$3,000.00 (alimony at \$1,400.00 per month and child support at \$1,600.00 per month). Thus, the total net monthly cash flow available to the parties is \$5,834.00.

The Brief of Appellant ("Defendant's Brief") claims that defendant's monthly living expenses are \$5,270.00. Id. at p. 23. This amount includes the support of the two grandchildren living with defendant. If all of defendant's claimed expenses were to be met, defendant would require all but \$564.00 of the parties' total net monthly cash flow. As such, it is clear that there are not sufficient funds available to pay the monthly mortgage payment of \$1,665.00 per month.

The trial court carefully and fully considered the evidence presented at trial concerning the parties' financial situation. After doing so, the trial court stated from the bench: "I CANNOT SEE HOW THE PARTIES CAN CONTINUE TO MAINTAIN THE RESIDENCE WITHOUT LISTING IT IMMEDIATELY FOR SALE." (TR, p.115, 11.13-15) Subsequently, in its written Findings of Fact (a copy of which is attached hereto as Appendix C) the trial court specifically found:

"Because of the substantial debt of the parties and the resulting negative net worth, the parties cannot afford to maintain and make the mortgage payments on the [marital residence] and the same must be sold at the earliest possible time."

(FOF, p.8, ¶17, index 93; emphasis added.)

The evidence in the record, as set forth in part above, plainly supports the trial court's conclusion that the marital home must be sold. As such, defendant has not met her burden of showing that the trial court's order in this regard was clearly erroneous.

Defendant also asserts that she should be awarded the marital home because it would be in the best interest of the minor children. In support of this position, defendant cites Peterson v. Peterson, 748 P.2d 593 (Utah App. 1988). In that case, the parties were divorced after five years of marriage, during which they had two children. Marital assets were meager. The principal asset was a three-bedroom house, located on ten and one-half acres, in which the family had lived during the



marriage. The home had been in the husband's family for two generations. The wife was on public assistance, had limited job experience and was unlikely to earn more than minimum wage.

After considering the various circumstances of the case, the Peterson court held:

In the present case, the only resource available to support the children is the family home. It makes no sense for plaintiff and the children to become public charges while defendant retains title to and possession of the family home for his own purposes. . . .

Further, allowing the children to remain in the family home would serve their emotional best interests by maintaining their roots and security and, thus, helping to ameliorate the trauma of the divorce. Therefore, in light of the total circumstances, we award the exclusive occupancy of the house to plaintiff until she remarries or until the children reach their majority, marry, or otherwise become independent of plaintiff.

(748 P.2d at 595-96; emphasis added.)

The following facts distinguish the case at hand from Peterson:

1. There is no evidence that the marital residence has been in the family for generations affording the children with a sense of roots.

2. Defendant is not on public assistance and will earn more than minimum wage. In fact, defendant is a trained and qualified teacher in good health and, while uncertified, can re-certify upon completion of three (3) academic hours of training.

Defendant has worked during most of the majority of the marriage as a teacher or secretary. (FOF, p.3, ¶7, index 88)

3. The marital residence is not the only resource available to support the children. Because defendant is receiving a total of \$3,000.00 per month in combined child support and alimony, there are clearly resources to provide suitable housing for the children.

4. The parties have lived in the home for less than two years. The home is two or three times the size of the parties' former home (TR, p.70, 1.24 to p.71, 1.1), and is valued \$100,000.00 more than the parties' prior home. (TR, p.70, 1.16; TR, p.114, 11.7-8)

5. The trial court in the instant case found defendant's testimony regarding the marital residence confusing:

JUDGE YOUNG: YOU KNOW, THE INTERESTING THING THAT I RECALL ABOUT THE TESTIMONY OF [DEFENDANT] IN RELATION TO THAT HOME IS SHE NOW COMES FORWARD AND SAYS SHE WANTS THE HOME. AT THE TIME THAT SHE MOVED TO SOUTH JORDAN, AS I RECALL HER TESTIMONY, SHE DID NOT WANT TO MOVE TO SOUTH JORDAN. IF SHE HAD HER CHOICE SHE STATED SHE WOULD LIVE ON THE EAST SIDE WITH A SWIMMING POOL, BUT NOW SHE WANTS COUNTRY LIVING. WHAT AM I TO CONCLUDE IS HER REAL DESIRE? IT SEEMS TO ME THAT THE TESTIMONY IN RELATION TO THE HOME IS BEING ADJUSTED BY ITS ECONOMIC IMPACT. I CAN'T SEE WHY SHE DOESN'T WANT TO SELL THAT HOME THAT BEARS A \$143,000.00 MORTGAGE THAT HAS BEEN A HOME THAT IS FAR IN EXCESS OF WHAT THE PARTIES CAN EFFECTIVELY AFFORD, PARTICULARLY UNDER THE PRESENT CIRCUMSTANCES OF DIVORCE, BUT NOW SHE WANTS TO TELL ME THAT SHE WANTS TO KEEP THE HOME BECAUSE SHE AND THE GRANDCHILDREN AND THE CHILDREN, TWO CHILDREN AND GRANDCHILDREN, RESIDE IN THE HOME, BUT THAT THEY DIDN'T WANT THE HOME AND SHE'D RATHER LIVE ON THE EAST SIDE WITH A SWIMMING POOL. TO ME, THE TESTIMONY BECOMES SOMEWHAT CONFUSING.

(TR, p.105, 1.20 to p.106, 1.13; emphasis added)

6. The trial court in the instant case specifically found that the parties cannot afford to maintain and make the mortgage payments on the marital residence and that it must be sold at the earliest possible time. (FOF, p.8, ¶17, index 93)

Due to the foregoing circumstances, it is plain that Peterson does not control the case at issue. The above facts clearly support the trial court's order that the marital residence be sold. The trial court did not abuse its discretion.

The court should note that financial considerations alone are sufficient justification to order sale of a marital home. In Blackman v. Blackman, 517 N.Y.S.2d 167 (A.D. 2 Dept. 1987) the trial court ordered the sale of the marital residence in order to provide for the spouses' future living expenses and to pay marital debts. The appellate court affirmed, stating:

Even though exclusive possession of the marital residence is usually granted to the spouse who has custody of the minor children of the marriage . . . , this need of the custodial parent to occupy the marital residence is weighed against the financial need of the parties for a quick sale of the marital residence.

Id. at 170 (citations omitted). The appellate court noted the evidence supported the trial court's finding that the spouses' salaries were insufficient for their living expenses and that the marital residence was a source of funds to meet these expenses and satisfy marital debts.

Similarly, the trial court in this case stated that "[b]ecause of the substantial debt of the parties and the resulting negative net worth, the parties cannot afford to maintain and make the payments on the [marital residence] and the same must be sold at the earliest possible time. (FOF, p.8, ¶17, index 93) This finding makes clear the parties do not have the funds to make the mortgage payments. Additionally, if defendant were to be awarded the marital home, plaintiff's equity would be "tied up forever." (TR, p.96, l.9) That would be inappropriate considering the fact that plaintiff has the responsibility to discharge essentially all of the marital debts. Plaintiff is obviously in need of funds to satisfy those debts.

At bottom, the record contains ample evidence to show that the trial court did not abuse its discretion in ordering the sale of the marital home. Accordingly, defendant has failed to establish that the trial court's factual determination in this connection was clearly erroneous, that is, that the trial court's finding is in conflict with the clear weight of the evidence or creates a definite and firm conviction that a mistake has been made.

**POINT II: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE DIVISION OF THE MORTGAGE PAYMENTS PENDING SALE OF THE MARITAL RESIDENCE.**

After some discussion regarding the amount of the mortgage payment, the trial court ruled:

we

JUDGE YOUNG: WHATEVER [THE MORTGAGE PAYMENT] IS I'M GOING TO ORDER THAT THE DEFENDANT PAY \$1,000.00 TOWARDS IT AND THE PLAINTIFF PAY THE REMAINDER UNTIL THE HOME IS SOLD. SO THAT WAY IT GIVES THE DEFENDANT SOME RELIEF ON THE MORTGAGE PAYMENT.

NOW, THAT WILL GO ON FROM APRIL 1ST THROUGH SEPTEMBER, THROUGH THE SEPTEMBER PAYMENT. THEREFORE, THEREAFTER THE DEFENDANT SHALL BE OBLIGATED TO BEAR THAT PAYMENT. SO I'M ANTICIPATING THAT THE HOME--I WANT THE PARTIES TO BE MOTIVATED TO SELL THE HOME SO THAT THEY CAN GET RID OF THAT HORRENDOUS LIABILITY.

NOW, THE COURT BELIEVES THAT THE ALIMONY FIGURE THAT--WELL, PENDING THE SALE OF THE HOME THE DEFENDANT SHALL BE OBLIGATED TO PAY-

MR. COWLEY: PLAINTIFF.

JUDGE YOUNG: EXCUSE ME, PLAINTIFF. YES. THANK YOU. PLAINTIFF SHALL BE OBLIGATED TO PAY \$1,200.00 IN ALIMONY. AT THE SALE OF THE HOME THE ALIMONY SHALL CONTINUE AND SHALL REMAIN AS A PERMANENT AWARD OF ALIMONY IN THE AMOUNT OF \$1,400.00 A MONTH.

(TR, p.116, 1.12 to p.114, 1.6; emphasis added)

Defendant's Brief argues that (i) there was no evidence "that the defendant would obstruct or prevent the sale of the marital residence, warranting the trial court's order that the defendant should bear the entire mortgage payment if the home did not sell by October 1, 1992," and (ii) "the court order serves as a punishment of the defendant, rather than a motivation."

(Defendant's Brief, p.21) Defendant is mistaken.

The trial court recognized that the "horrendous liability" (TR, p.116, 1.22) associated with the marital home

must be eliminated as soon as possible. The trial court ordered a mortgage payment allocation which was designed to motivate the parties to sell the home. Defendant claims that there was no evidence that defendant would obstruct or prevent the sale of the marital home. History has demonstrated the court's wisdom in this matter because it is now apparent, as reflected in a collateral proceeding in this case, that defendant intends to and in fact has prevented the sale of the marital home.<sup>1</sup>

**POINT III: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING THE DEFENDANT CHILD SUPPORT AT THE LEVEL OF ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600.00) PER MONTH.**

Defendant argues that the trial court's award of child support in the amount of \$1,600.00 per month is "simply too low." Defendant's Brief, p.26. Defendant also asserts that the trial court's findings are inadequate.

In large part, defendant's analysis relies upon Allred v. Allred, 797 P.2d 1108 (Utah App. 1990). Defendant, however, fails to note that Allred predates the statutory guidelines now in effect. At the time of the dispute in Allred, §78-45-7(2) Utah Code Ann. (1987) required trial courts to consider all

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<sup>1</sup>As the Court is aware, on Tuesday, September 15, 1992, defendant's Motion to Stay the portions of the trial court judgment awarding the marital residence to plaintiff and ordering the immediate sale thereof came on for hearing before the Court of Appeals. A potential buyer had made an offer to purchase the marital home. The Court of Appeals granted defendant's Motion to Stay.

relevant factors in determining child support, including but not limited to the following:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

Allred, supra, at 111. In 1987 it was proper to require trial courts to consider the above factors because the 1987 Uniform Civil Liability for Support Act (a copy of which is attached hereto as Appendix D) did not contain a child support table.

The Uniform Civil Liability for Support Act has been amended since Allred. Section 78-45-7 Utah Code Ann. now provides in part:

(2) If no prior court order exists, or a material change in circumstances has occurred, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the needs of the obligee, the obligor, and the child;
- (f) the ages of the parties; and
- (g) the responsibilities of the obligor and the obligee for the support of others.

Thus, it is clear that the factors listed in §78-45-7(3) only apply if the court finds sufficient evidence to rebut the guidelines. Rebuttal is discussed in §78-45-7.2(3):

A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

The case at hand does not involve a situation where rebutting the guidelines is at issue. Therefore, the factors listed in §78-45-7(3) are not applicable to this case.

The statute at issue in this case is §78-45-7.12, which provides:

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount may be ordered, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.



Defendant, in effect, argues that if the combined adjusted gross income exceeds the highest level specified in the table, the court must consider the factors contained in §78-45-7(3).

Section §78-45-7.12 does not say that. If the legislature had intended that the factors contained in §78-45-7(3) are to be applied when gross income exceeds the highest level in the table, the legislature would have said so. All that the legislature in fact required is that "an appropriate and just child support amount may be ordered, but the amount ordered may not be less than the highest level specified in the table for the number of children due support." That is exactly what the trial court did in this case after considering the evidence at trial.

Defendant gave the following testimony at trial:

Q (BY MS. WILLIAMS) MRS. BAKER, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE UNIFORM CHILD CUSTODY GUIDELINES AND THE CHILD SUPPORT OBLIGATION?

A YES.

Q AND YOU'RE AWARE THAT THE AMOUNT OF INCOME MADE BY MR. BAKER IS IN EXCESS OF \$10,000.00 AND, THEREFORE, NOT ON THE CHILD SUPPORT SCHEDULE.

A YES.

Q BASED UPON THE GUIDELINES AT THE TOP FIGURE OF 1,400, WHICH IS 14 PERCENT OF \$10,000.00, WOULD IT BE YOUR DESIRE THAT THAT SAME 14 PERCENT FIGURE BE USED TO COMPUTE THE CHILD SUPPORT IN THIS MATTER?

A YES.

Q AND WHAT IS THE AMOUNT OF CHILD SUPPORT THEN THAT YOU BELIEVE IS APPROPRIATE?

A 1,750 A MONTH.

Q AND ARE YOUR EXPENSES--ARE YOUR EXPENSES SUCH THAT THAT 1,750 WOULD BE NECESSARY FOR THE CARE OF YOUR CHILDREN?

A YES, UM, YES.

(TR, p.84, 1.8 to p.85, 1. 2)

It is clear from the foregoing that defendant arrived at the sum of \$1,750.00 by applying fourteen percent (14%) (which is the percentage applied to the \$10,000.00 maximum income in the statutory table) to plaintiff's gross monthly income of \$12,510.00. The flaw with that approach is that it does not consider that fact that as gross income increases, the percentage of income required for child support decreases. The following income and child support levels from the statutory table are illustrative (child support is for two children):

<u>Gross Income</u>	<u>Child Support as a Percentage of Income</u>	<u>Child Support</u>
\$ 7,500	16%	\$1,205
10,000	14	1,400

If this table were extrapolated so as to apply the same two percent (2%) decrease to an income increase of \$2,500.00, the resulting child support would be as follows:

<u>Gross Income</u>	<u>Child Support as a Percentage of Income</u>	<u>Child Support</u>
\$12,500	12%	\$1,500

Under this extrapolation approach, plaintiff's monthly child support obligation would be \$1,500.00 per month because his gross

monthly income is \$12,510 per month. The trial court, however, went further and awarded \$1,600.00 per month.

Defendant complains that the trial court did not make adequate findings to support defendant's child support award. Defendant is wrong. At trial plaintiff suggested that he pay \$1,600.00 per month in child support. See Plaintiff's Exhibit 2. The trial court specifically found that amount included some surplus:

JUDGE YOUNG: EIGHT AND NINE THIS YEAR. AND THE TOTAL COST--THEY HAVE OFFERED \$1,600.00 A MONTH, PLUS OR MINUS A FEW DOLLARS. I THINK IT WAS A LITTLE BIT OVER. BUT THE CHILDREN DON'T COST \$800.00 A MONTH FOR FOOD, CLOTHING AND SHELTER. SO THERE'S GOT TO BE SOME SURPLUS IN THAT.

(TR, p.109, 11.3-8) Additionally, the Findings of Fact provide:

8. The Defendant testified that her monthly expenses are \$4,800.00 per month, excluding her car payment which is \$396.00, for a total of \$5,196.00 per month. The Defendant testified that those expenses include the expenses attendant to herself, her two children, and the two grandchildren residing in her home. The expenses related to the two grandchildren are not relevant to, nor should they be considered in, the Court's award of alimony and child support.

9. Premised and predicated upon the total gross compensation of the Plaintiff (including bonuses and car allowance) of \$150,120.00 and further premised and predicated upon the fact that the Defendant is currently unemployed and currently has no income, reasonable child support to be paid by Plaintiff to Defendant for the benefit of the two (2) children is \$1,600.00 per month. The income level of the Plaintiff exceeds the guideline amounts set forth in Utah Code Ann.

§78-45-1 and the Court finds \$1,600.00 to be a reasonable sum.

(FOF, p.3, ¶8 to p.4, ¶9, index 88-89)

In doing so, the trial court acted consistently with statutory requirements.

Thus, it is clear that in awarding child support the trial court: (i) considered defendant's testimony regarding monthly expenses, (ii) found that the amount of \$1,600.00 included some surplus costs for the children, (iii) found that plaintiff's gross income was \$150,120.00, and (iv) found that plaintiff was not employed. The trial court specifically stated that "[t]he income level of the Plaintiff exceeds the guideline amounts set forth in Utah Code Ann. §78-45-1 and the Court finds \$1,600.00 to be a reasonable sum." (FOF, p.4, ¶9, index 89) That is wholly consistent with the mandate set forth in §78-45-7.12.

Because the trial court acted in full compliance with §78-45-7.12 and made appropriate findings, the trial court did not err in setting child support at \$1,600.00 per month. Further, as indicated above, the record contains ample evidence to show that the trial court did not abuse its discretion in establishing that level of child support. Accordingly, defendant has failed to establish that the trial court's factual determination regarding the award of child support was clearly erroneous.

**POINT IV: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION  
IN AWARDING THE DEFENDANT ALIMONY AT THE  
LEVEL OF ONE THOUSAND FOUR HUNDRED DOLLARS  
(\$1,400.00) PER MONTH.**

**A. THE TRIAL COURT'S FINDINGS ARE ADEQUATE  
TO SUPPORT THE ALIMONY AWARD AND THE ALIMONY  
AWARD IS ADEQUATE.**

The trial court awarded defendant the sum of One Thousand Four Hundred Dollars (\$1,400.00) per month as and for alimony. (DOD, p.4, ¶5, index 99) Defendant claims that \$1,400.00 per month is inadequate and that the trial court's findings of fact are inadequate. Defendant is mistaken on both counts.

In English v. English, 565 P.2d 409 (Utah 1977), the Supreme Court of Utah stated that the criteria to be "considered in determining a reasonable award for support and maintenance include the financial conditions and needs of the wife, the ability of the wife to produce a sufficient income for herself, and the ability of the husband to provide support." Id. at 411-12. The three factors articulated in English must be considered in fixing a reasonable alimony award. Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985). Further, "[t]he trial court must make sufficiently detailed findings of fact on each factor to enable a reviewing court to ensure that the trial court's discretionary determination was rationally based upon these three factors." Bell v. Bell, 810 P.2d 489, 492 (Utah App. 1991). Finally, "[a]n alimony award should . . . to the extent possible, equalize the parties' respective standards of living and maintain them at a

level as close as possible to that standard of living enjoyed during the marriage." Gardner v. Gardner, 748 P.2d 1076, (Utah 1988). As explained below, the trial court followed the mandates of English, Jones, Bell and Gardner.

The trial court's Findings of Fact state in part:

6. The Plaintiff is employed and his current annual gross compensation, including car allowance and anticipated bonuses, is \$150,120.00. The Plaintiff has been the primary wage earner during the marriage. The parties' incomes for the previous years, including bonuses and relocation reimbursement, are as follows: 1990 - \$169,248; 1989 - \$120,434; 1988 - \$111,715; 1987 - \$92,674; 1986 - \$76,149.

7. The Defendant is an educated, trained and qualified teacher in the Utah public school system and she is in good health. She last worked and last taught a full contract year for the school year 1989-1990. She has worked during the majority of the parties' marriage as a school teacher or secretary. She is currently uncertified, but can recertify upon completion of three (3) academic hours of training which she can readily obtain between now and the beginning of the 1992-1993 school year. The Defendant is currently unemployed and presently has no income.

8. The Defendant testified that her monthly expenses are \$4,800.00 per month, excluding her car payment which is \$396.00, for a total of \$5,196.00 per month. The Defendant testified that those expenses include the expenses attendant to herself, her two children, and the two grandchildren residing in her home. The expenses related to the two grandchildren are not relevant to, nor should they be considered in, the Court's award of alimony and child support.

9. Premised and predicated upon the total gross compensation of the Plaintiff

(including bonuses and car allowance) of \$150,120.00 and further premised and predicated upon the fact that the Defendant is currently unemployed and currently has no income, reasonable child support to be paid by Plaintiff to Defendant for the benefit of the two (2) children is \$1,600.00 per month. The income level of the Plaintiff exceeds the guideline amounts set forth in Utah Code Ann. §78-45-1 and the Court finds \$1,600.00 to be a reasonable sum. Given the Plaintiff's current income and the fact that the Defendant is not currently employed and is without income and given the debts and expenses of the parties, most of which must be paid by the Plaintiff and given the needs of the Plaintiff and the Defendant, reasonable alimony to be paid by the Plaintiff to the Defendant is \$1,400.00 per month.

(FOF, p.2, ¶6 to p.4, ¶9)

The above Findings of Fact make it abundantly clear that the trial court in awarding alimony expressly considered (i) the financial conditions and needs of the wife, (ii) the ability of the wife to produce a sufficient income for herself, and (iii) the ability of the husband to provide support. It should be noted that even though defendant did not present any evidence at trial concerning her needs, the trial court expressly considered defendant's testimony that she, the two minor children and the two grandchildren have total monthly expenses of \$5,196.00. The above Findings of Fact also plainly show that the trial court made sufficiently detailed findings of fact on each factor to enable a reviewing court to ensure that the trial court's discretionary determination was rationally based upon those three factors. The only remaining question, then, is whether the trial

court equalized the parties' respective standards of living to the extent possible.

Defendant's argument regarding the parties' respective post-divorce incomes does not take into account all of the evidence presented at trial. Plaintiff's Exhibit 2, on the other hand, sets forth a complete cash flow analysis of plaintiff's earnings. That Exhibit begins with plaintiff's gross income and then subtracts therefrom FICA, various withholdings, the debts assigned to plaintiff, child support, alimony, and state and federal taxes:

	<u>Annual</u>
Plaintiff's current gross annual income	
Includes car allowance of \$7,800 and average bonus	\$150,120.00
Less FICA withheld	(5,115.00)
Withholding for health and accident insurance	(468.00)
Withholding for accidental death	(210.00)
Withholding for dental insurance	(192.00)
Withholding for life insurance	(821.00)
Withholding for vision insurance	(120.00)
Car payment on GMC at \$452.00 per month	(5,424.00)
Car payment on Bronco at \$264.00 per month	(3,168.00)
Monthly payment to Olivette Furniture - \$200.00	(2,400.00)
Repayment of K-plus no. 1 loan @ \$135.00 per month	(1,620.00)
Repayment of K-plus no. 2 loan @ \$57.00 per month	(684.00)
Pay Dr. Hicks at \$25.00 per month	(300.00)
Payment to Paul Baker at \$750.00 per month	(12,000.00)
Pay Pacific Power at \$400.00 per month	(4,800.00)
Child support for two children at \$1,600.00 per month	<u>(19,284.00)</u>
Balance available for tax and support of the parties	\$ 93,514.00
Suggested alimony for Mrs. Baker at \$1,400.00 per month	(16,800.00)
Federal and state taxes payable by Mr. Baker calculated as follows:	



Gross income \$150,120.00  
 Less alimony (16,800.00)  
 Less 2 personal exemptions  
 and itemized deductions (5,000.00)  
 Taxable income \$128,320.00

Federal and state tax at  
 combined estimated rate x.33  
 Federal & state income tax (\$42,345.00)

Net annual cash available for Mr. Baker \$34,009.00

Net monthly cash available for Mr. Baker \$2,834.00

The net result is that even though plaintiff's gross monthly income is \$12,510.00, after plaintiff meets all of the above monthly obligations, plaintiff has only \$2,834.00 per month to meet his expenses and defendant has \$3,000.00 per month to meet her expenses.

Plaintiff's Exhibit 2 also shows defendant's cash flow:

	<u>Month</u>	<u>Annual</u>
Net cash for Mrs. Baker and children		
Child support	\$1,600.00	\$19,284.00
Alimony	<u>1,400.00</u>	<u>16,800.00</u>
	<u>\$3,000.00</u>	<u>\$36,084.00</u>

With alimony and child support at this level and with Mrs. Baker filing as head of household and taking the children as exemptions, she will not incur Federal or State income tax liabilities.

Accordingly, defendant has \$3,000.00 per month to meet the needs of herself and the two children. This is more than one-half (½) of the parties' monthly cash flow.

Apparently, defendant now takes the position that only alimony, and not child support, should be taken into account when the trial court is equalizing the parties' respective standards of living. That is not what defendant's counsel maintained at trial. At trial, defendant's counsel argued as follows:

AND I THINK THE COURT HAS TO LOOK AT THE  
RELATIVE EARNINGS REGARDLESS OF THE FACT THAT  
SHE CAN AND WILL AND WANTS TO GO OUT AND  
WORK, BUT THE COURT NEEDS TO LOOK AT WHAT'S  
GOING TO HAPPEN AFTERWARDS AND THE FACT THAT  
WHEN SHE'S AWARDED CHILD SUPPORT AND ALIMONY  
THAT IT SHOULD BE A REASONABLE AMOUNT AND  
THAT IT SHOULD EQUALIZE THOSE PARTIES'  
INCOMES. THANK YOU.

(TR, p.110, 11.17-23; emphasis added) Defendant was correct in this assertion. It is reasonable and proper for the trial court to take into account both alimony and child support in equalizing the parties' incomes. This is entirely consistent with the directive that the trial court should to the extent possible "equalize the parties' respective standards of living and maintain them at a level as close as possible to that standard enjoyed during the marriage." Gardner v. Gardner, 748 P.2d 1076, 1081 (Utah 1988).

In the instant case, the trial court considered all the evidence at trial and then equitably divided plaintiff's income between the parties. The division allocates \$2,834.00 per month to plaintiff and \$3,000.00 per month to defendant (\$1,400.00 in alimony and \$1,600.00 per month in child support). The fact that defendant was awarded more than half of the cash flow was

appropriate given that defendant has custody of the two children. This division has to the extent possible equalized the parties' respective standards of living and maintained them at a level as close as possible to the standard of living enjoyed during the marriage. Accordingly, the trial court did not abuse its discretion in the award of alimony.

**B. THE TRIAL COURT WAS CORRECT IN NOT CONSIDERING THE EXPENSES ATTENDANT TO THE GRANDCHILDREN.**

At trial plaintiff testified that the parties' granddaughter, Lacey, had been living with the parties for approximately five years, and that Lacey's mother had also lived with the parties for three or four years during that time. (TR, p.43, 11.19-21; p.44, 12-18) The parties' grandson, Christopher, had lived with the parties for about one month while the parties were living together. (TR, p.46, 11.10-13) Plaintiff testified that he did not request that defendant stay at home and take care of the grandchildren. (TR, p.45, 1.25 to p.46, 1.9) Plaintiff also testified that he did not encourage Christopher moving into the marital home, and, that due to emotional problems that the grandchildren and their mother may suffer, plaintiff would like to see both of the grandchildren go back with their mother. (TR, p.46, 1.25 to p.47, 1.12)

Plaintiff's counsel objected to defendant's testimony regarding the grandchildren on the grounds of irrelevancy and immateriality. (TR, p.62, 11.12-15) The trial court sustained

that objection. (TR, p.63, 11.5-6) Defendant's counsel made a proffer of defendant's testimony regarding the grandchildren. (TR, p.89, 1.19 to p. 90, 1.9)

The trial court found that "[t]he expenses related to the two grandchildren are not relevant to, nor should they be considered in, the Court's award of alimony and child support." (FOF, p.3, ¶8, index 88)

Plaintiff does not have a common law or statutory duty to provide support for the parties' grandchildren. Parents have the duty to support their children. Utah Code Ann. §78-45-3 to 4.

Defendant "does not contend that the plaintiff owes a duty of child support for the grandchildren in defendant's home." Defendant's Brief, p.37. Defendant is correct in this contention. Defendant, however, attempts to make an end run around the fact that plaintiff does not have a duty to support the grandchildren. Defendant does so by claiming that expenses attendant to the grandchildren should be included in her alimony award. As such, defendant asserts that the trial court erred in not permitting defendant's testimony relating to the grandchildren. Because plaintiff does not have a duty to support the minor grandchildren, plaintiff should not be required to do so, whether the support is labeled as "child support" or "alimony."

Because testimony relating to the grandchildren is not relevant to this action, the trial court did not err by excluding defendant's proffered testimony relating to the grandchildren. The Court should note that defendant's proffered testimony did not provide information relating to the expenses of the minor grandchildren.

In sum, because the grandchildren's expenses are not relevant to this case, the trial court did not err by not considering such expenses in awarding child support and alimony.

**POINT V: THE TRIAL COURT DID NOT ERR OR ABUSE ITS DISCRETION IN THE DIVISION OF THE MARITAL ESTATE.**

Plaintiff's Exhibit 1 contains a statement of the parties' assets and liabilities and plaintiff's suggested division thereof. (A copy of Plaintiff's Exhibit 1 is attached hereto as Appendix E.) At trial, plaintiff's counsel made the following offer of proof which was accepted by the court:

LET ME TRY BY WAY OF PROFFER, IF I MAY, TO SAVE US ALL SOME TIME, IT WOULD BE MR. BAKER'S TESTIMONY THAT PLAINTIFF'S EXHIBIT 1, WHICH IS ENTITLED STATEMENT OF ASSETS AND LIABILITIES, WAS PREPARED UNDER HIS SUPERVISION AND DIRECTION AT MY OFFICE, THAT IT CONTAINS ALL OF THE ASSETS AND LIABILITIES OF WHICH HAS ANY KNOWLEDGE AND THAT IT ALSO CONTAINS A PROPOSED DIVISION, HIS SUGGESTED DIVISION. AND THAT WOULD BE HIS TESTIMONY IF I HAD ASKED HIM TO TESTIFY ABOUT THIS EXHIBIT. BASED ON THAT PROFFER, IF THAT'S ACCEPTABLE TO MS. WILLIAMS, I WOULD OFFER EXHIBIT 1.

(TR, p. 16, 1.18 to p. 17, 1.2) Defendant's counsel had no objection and the trial court received Plaintiff's Exhibit 1.

(TR,17, 11.2-7) As such, the trial court had evidence of all of the parties' assets and liabilities, and their respective values and amounts.

Defendant also provided a schedule of marital assets and her proposed division thereof, which was designated as Defendant's Exhibit 7. A copy of Defendant's Exhibit 7 is attached hereto as Appendix F.

Based on the evidence at trial, the trial court made the following findings regarding the parties' assets and liabilities:

13. The assets and (liabilities) of the parties accumulated and incurred during the marriage and currently outstanding and an equitable division thereof is as follows:

<u>No.</u>	<u>Description</u>	<u>Mrs. Baker</u>	<u>Mr. Baker</u>
(a)	Residence at 11718 S. Eureka Way		\$183,000.00
(b)	Mortgage on residence		(143,000.00)
(c)	Household furnishings and fixtures at residence	\$15,000.00	15,000.00
(d)	2 3/4 acres in Price, Utah		6,000.00
(e)	1990 Ford Bronco operated by Mrs. Baker	17,000.00	
(f)	Purchase debt on 1990 Ford Bronco	(14,500.00)	
(g)	1991 GMC operated by Mr. Baker		18,000.00
(h)	Purchase debt on 1991 GMC		(19,000.00)
(i)	1989 Ford Bronco		12,000.00
(j)	Purchase debt on 1989 Bronco		(10,800.00)
(k)	Horse - 2 year filly		2,000.00

(l)	Horse - D.B. Cooper	1,500.00	
(m)	Garden, power & hand tools	2,000.00	
(n)	Tack for horses	400.00	
(o)	U.S. Savings Bonds	600.00	
(p)	K-plus loan no. 1 owing to Pacific Power	(1,762.00)	
(q)	K-plus loan no. 2 owing to Pacific Power	(926.00)	
(r)	Loan payable to Plaintiff's parents	(94,389.00)	
(s)	Loan payable to Pacific Power	(6,700.00)	
(t)	Payable to Dr. Hicks	(560.00)	
(u)	Payable to Olivette Furniture	(2,000.00)	
(v)	Estimated attorney's fees for Mr. Baker	(2,500.00)	
(w)	Estimated attorney's fees for Mrs. Baker	(2,500.00)	
(x)	Clothing and personal effects each party - not valued -	<u>NV</u>	<u>NV</u>
	NET VALUES	<u>\$17,500.00</u>	<u>\$ (43,637.00)</u>
(y)	Together with an equal division between the parties of all 401K, pension and retirement funds of both parties per appropriate Qualified Domestic Relations and other necessary orders.		

(FOF, p.5 ¶13 to p.6, index 90-91) As is evident from the above findings, the trial court gave careful consideration to all of the parties' assets and liabilities.

In Dunn v. Dunn, 802 P.2d 1314, 1323 (Utah App. 1990), the court held that, absent special circumstances, each party is entitled to fifty percent of the marital property. As is readily

apparent from the above "equitable division," the parties have a negative net worth. Thus, under Dunn, each party should have been awarded one-half (½) of the parties' negative net worth. That, however, was not done. According to the division of the marital net worth, as reflected in ¶13 quoted above, plaintiff was left with a negative net worth of \$43,637.00, while defendant was awarded assets such that she had a positive net worth of \$17,500.00. From plaintiff's perspective, this division of net worth falls short of the equal division called for in Dunn. Yet it is not plaintiff who is complaining; defendant is. Because defendant received substantially more than one-half (½) of the parties' net worth, defendant's assertions that the trial court abused its discretion and treated her unfairly are totally without merit.

It appears that defendant's major complaint with respect to the property division concerns the parties' loan payable to plaintiff's parents in the amount of \$94,389.00. Apparently, defendant believes that the trial court erred in finding that this obligation is a marital liability. The evidence presented at trial, however, clearly shows that the trial court did not abuse its discretion in making this finding:

1. Exhibit 1 clearly lists this obligation as a marital liability.

2. Plaintiff's testimony on this subject can be found in the trial transcript at the following pages:



TR, p. 21, 11.2-21:

Q (BY MR. COWLEY) NOW, ON PLAINTIFF'S EXHIBIT 1, MR. BAKER, I NOTICE A LINE NUMBER 18 SAYS LOAN PAYABLE TO YOUR PARENTS, \$94,389.00.

A YES, SIR.

Q AND IN FACT, YOU AND MRS. BAKER OWE THAT TO YOUR MOTHER AND DAD.

A YES, WE DO. AND MY MOTHER AND DAD WANT IT.

Q THEY'VE ASKED FOR IT?

A YES.

Q AND THAT'S MONEY THAT THEY ADVANCED TO YOU AND MRS. BAKER OVER MANY YEARS; IS THAT CORRECT?

A YES, THAT'S CORRECT.

Q AND YOUR FATHER KEPT VERY CLOSE TRACK OF IT?

A VERY CLOSE.

Q HAS A SCHEDULE?

A YES.

Q KEEPS UP WITH IT. IT'S ALSO TRUE THAT YOU'VE MADE SOME PAYMENTS ON THAT OVER THE YEARS.

A THAT'S CORRECT. I'VE MADE WHAT PAYMENTS I COULD MAKE.

TR, p. 35, 11.8-16:

Q [BY MS. WILLIAMS] MR. BAKER, YOU INDICATED THAT YOUR FATHER KEPT A JOURNAL OR LEDGER OF PAYMENTS ON THE LOAN THAT YOU TESTIFIED TO. DID YOU KEEP A RECORD OF PAYMENTS MADE?

A YES.

Q AND I JUST PUT BEFORE YOU, I BELIEVE THAT'S DEFENDANT'S EXHIBIT 3. DOES THAT EXHIBIT--CAN YOU TELL ME IF THAT EXHIBIT SETS FORTH THE PAYMENTS THAT HAVE BEEN MADE BY YOU TO YOUR FATHER?

A I BELIEVE SO, YES.

Q AND DOES THAT ACCURATELY REFLECT PAYMENTS MADE SINCE THE INCEPTION OF THE OBLIGATION IN 1984?

A YES.

(A copy of Defendant's Exhibit 3 is attached hereto as Appendix H.)

TR, p.36, 11.4-13:

Q (BY MS. WILLIAMS) MR. BAKER, YOU TESTIFIED THAT YOUR WIFE KNEW ABOUT THE FUNDS THAT YOU BORROWED FROM YOUR FATHER.

A YES.

Q DID SHE KNOW ABOUT EACH TIME YOU BORROWED MONEY?

A YOU MEAN SPECIFIC?

A AT THAT PARTICULAR MOMENT SHE MAY HAVE AND SHE MAY NOT HAVE. THERE WERE TIMES WHEN SHE BORROWED THE MONEY FROM MY PARENTS.

TR, p.38, 1. 19 to p.39, 1.5:

Q [BY MS. WILLIAMS] YOU MADE NO PAYMENTS IN 1990. IS THERE SOME REASON YOU DIDN'T?

A I HAD EXTREME DEBT. NO MONEY.

Q YOU MADE ONE PAYMENT IN '91 AND THAT WAS IN DECEMBER OF, JUST RECENTLY, DECEMBER OF LAST YEAR; IS THAT CORRECT?

A THAT'S CORRECT.

Q IS THERE SOME REASON THAT YOU MADE THAT PAYMENT AFTER HAVING NOT MADE A PAYMENT FOR SEVERAL YEARS?

A TWO REASONS. ONE IS I HAD THE MONEY AND THE SECOND IS I'M GETTING A LOT OF PRESSURE FROM MY PARENTS TO PAY 'EM BACK. MY FATHER'S CLOSE TO 72 YEARS OLD.

TR, p.47, 1.18 to p. 48, 1.15:

Q [BY MS. WILLIAMS] WHAT WOULD BE YOUR INTENTIONS REGARDING PAYING BACK THE AMOUNTS THAT YOU SAY ARE OWED TO YOUR DAD?

A MY INTENTIONS IS TO PAY MY FATHER BACK.

Q HOW?

A CASH. AS I'VE DONE IN THE PAST. IF THERE'S SOMETHING THAT I CAN TRADE HIM FOR CREDIT. THAT TYPE OF THING. I HOPED TO PAY HIM AROUND \$1,000.00 A MONTH IF I CAN MAKE IT.

Q WELL, YOU MADE ONE PAYMENT IN 1991 SO IS THERE A POSSIBILITY YOU'LL ONLY MAKE ONE PAYMENT IN '92?

A WELL, NO. I'M MAKING THE PAYMENTS AS I CAN GET THE MONEY. IF I DON'T HAVE ANY MONEY I CAN'T PAY HIM.

Q DO YOU HAVE MORE DEBT NOW THAN YOU HAD IN 1984?

A YES.

Q IN RELATION TO YOUR INCOME DO YOU HAVE MORE DEBT?

A YES.

Q DO YOU THINK YOUR FATHER WOULD BE SATISFIED WITH LESS THAN A \$1,000.00 A MONTH PAYMENT?

A THERE'S A POTENTIAL. BUT AS I MENTIONED EARLIER, MY FATHER'S RETIRED, HE'S 72 YEARS OLD. I DON'T KNOW HOW MUCH LONGER MY FATHER IS GOING TO BE AROUND. HE LOOKS AT THIS AS A COMMITMENT. HE GAVE US THE MONEY AND WE TOLD HIM WE'D PAY IT BACK.

3. The following exchange occurred at trial between the trial judge and defendant's counsel:

JUDGE YOUNG: OKAY. MS. WILLIAMS, DO I RECALL CORRECTLY THAT YOU HAVE TAKEN THE DEPOSITION OF HIS PARENTS IN THE DISCOVERY PORTION OF THIS CASE?

MS. WILLIAMS: I DID, YOUR HONOR.

JUDGE YOUNG: AND THAT IT WOULD BE THEIR TESTIMONY THAT IF THEY WERE CALLED TO TESTIFY THEY WOULD STATE THAT THIS IS AN OBLIGATION THAT THEY INTEND TO HAVE RE-PAID?

MS. WILLIAMS: THAT WAS THEIR TESTIMONY.

(TR, p. 43, 11.7-14)

The Court should note that plaintiff's father is 72 years old and that it will take approximately eight years to retire this debt with monthly payments of \$1,000.00 per month without interest. At that time plaintiff's father will be approximately 80 years old.

Based upon the evidence at trial, the trial court made the following findings of fact:

14. The obligation set forth in subparagraph (r) of paragraph 14 above, which is a loan repayable to the Plaintiff's parents in the amount of \$94,389.00 (which does not include any interest), is a marital debt of the parties which must be considered in the division of the marital estate and which accordingly reduces the marital net worth of the parties to a negative net worth. The debt was incurred from time to time commencing in 1984 and some payments have been made thereon as evidenced by Defendant's Exhibit 3. Since Plaintiff is charged with the responsibility for repayment of that debt to Plaintiff's parents, the division of the marital net worth, as provided for in paragraph 14 above, leaves the Plaintiff with a negative net worth of \$43,637.00, while the assets being awarded to the Defendant have a positive net worth of \$17,500.00. The Court finds this imbalance to be necessary and equitable because the Plaintiff is the only party who has earnings with which the liabilities of the parties, as set forth in paragraph 14 above, can be paid.

(FOF, p.6 ¶14 to p.7, index 92)

The evidence set forth above is legally sufficient to support the trial court's factual determination regarding the existence of the marital debt to plaintiff's parents. The trial court's determination is not clearly erroneous because it is not against the clear weight of the evidence.

Defendant complains that the trial court made "no order relating to the maintenance of [the debt to plaintiff's parents]." Defendant's Brief, p.43. Defendant is mistaken. As between plaintiff and defendant, the trial court ordered plaintiff to pay this debt and save and hold defendant harmless therefrom. (DOD, p.9, ¶15, index 104)

**POINT VI: PLAINTIFF SHOULD BE AWARDED HIS ATTORNEYS' FEES AND COSTS ON APPEAL.**

In the event that plaintiff substantially prevails on appeal, the Court should award plaintiff his attorneys' fees and costs on appeal. (See Lyngle v. Lyngle, 831 P.2d 1027, 1033 (Utah App. 1992)) stating "Generally, when the trial court awards fees in a domestic action to the party who then substantially prevails on appeal, fees will also be awarded to that party on appeal." The Court should note that in the instant case, attorney's fees were resolved by stipulation in the division of the marital estate. (FOF, p.6, ¶13, index 91; TR, p.90, 1.13 to p.91, 1.16))

#### CONCLUSION

Defendant complains that the trial court abused its discretion with respect to a number of matters. Rather than marshalling the supporting evidence and then demonstrating that the evidence is inadequate to sustain the trial court's findings, defendant has attempted to retry this case in the Court of Appeals by advancing the evidence and arguments supporting her position. This Court, however, is not "free to substitute [its] judgment for that of the trial court." Lyngle v. Lyngle, 831 P.2d 1027, 1033 (Utah App. 1992).

The record contains ample evidence to show that the trial court did not abuse its discretion with respect to any matter on appeal. Accordingly, defendant has failed to establish that the trial court's factual determinations were clearly erroneous, that is, that the trial court's findings are in

conflict with the clear weight of the evidence or create a definite and firm conviction that a mistake has been made. As such, the judgment of the trial court should be affirmed.

DATED this 18<sup>th</sup> day of September, 1992.

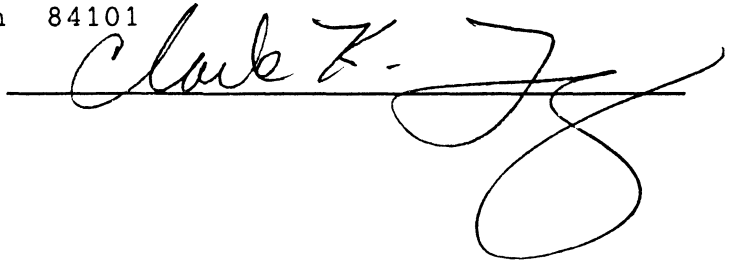
VAN COTT, BAGLEY, CORNWALL & McCARTHY

By Clark K. Taylor  
James P. Cowley  
Clark K. Taylor  
Attorneys for Plaintiff/Appellant  
50 South Main Street, Suite 1600  
P. O. Box 45340  
Salt Lake City, Utah 84145  
Telephone: (801) 532-3333

CERTIFICATE OF HAND DELIVERY

I hereby certify that I caused four true and correct copies of the within and foregoing Brief of Appellee to be hand delivered this 18<sup>th</sup> day of September, 1992, to the following:

Kellie F. Williams  
Corporon & Williams  
310 South Main Street  
Suite 1400  
Salt Lake City, Utah 84101

A handwritten signature in cursive script, appearing to read "Clark Z. Jg", is written over a horizontal line.



## APPENDICES

- A. Judgement and Decree of Divorce
- B. Plaintiff's Exhibit 2 - Plaintiff's Earnings and Plaintiff's Suggested Allocation and Utilization Thereof
- C. Findings of Fact and Conclusions of Law
- D. 1987 Uniform Civil Liability for Support Act
- E. Plaintiff's Exhibit 1 - Statement of Assets & (Liabilities) and Plaintiff's Suggested Division Thereof
- F. Defendant's Exhibit 7 - Schedule of Marital Assets and [Defendant's] Proposed Property Distribution
- G. Defendant's Exhibit 3 - Paul Baker Loan Payment History

VAN COTT, BAGLEY, CORNWALL & McCARTHY  
James P. Cowley (0739)  
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P.O. Box 45340  
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Telephone: (801) 532-3333

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DAN BAKER,	)	
	)	JUDGMENT AND DECREE OF
Plaintiff,	)	DIVORCE
	)	
vs.	)	
	)	Civil No. 914902633DA
LUJUANA BAKER,	)	
	)	Judge David S. Young
Defendant.	)	
	)	
	)	
	)	

---

The Plaintiff and the Defendant and their respective counsel appeared for trial before the Honorable David S. Young, Judge of the above-entitled Court at the hour of 8:00 a.m. on Thursday, March 26, 1992. The parties were sworn and testified. Exhibits were received. The parties entered into a stipulation on the record. The Court has heretofore made and entered Findings of Fact and Conclusions of Law. Based upon the matters on file herein, the testimony of the parties, the Exhibits received into evidence, the stipulation of the parties and the Findings of Fact and Conclusions of Law heretofore entered in

this matter and good cause appearing, the Court now makes and enters this Judgment and Decree of Divorce:

1. The parties are each given and granted a Judgment and Decree of Divorce severing the bonds of matrimony and divorcing each from the other. This divorce shall be final upon entry of this Judgment.

2. There is awarded to the Defendant the care, custody and control of the two minor children who are issue of the marriage, to wit:

Camille Ann born Jan. 4, 1983, 9 years of age  
Dannie born December 5, 1983, 8 years of age

There is reserved to the Plaintiff liberal and generous rights of visitation, including the right to visit with the children at all reasonable times and places and not less than the amount established in the visitation policy adopted by the Third Judicial District Court in and for Salt Lake County, State of Utah. The Defendant shall keep the Plaintiff informed as to the health, education, welfare and social and religious development of the children and the Plaintiff shall have open and free access to the health, education and religious records of the children. The Defendant shall consult with and advise the Plaintiff about major decisions that affect the children. Without diminishing Defendant's authority and responsibility as

the custodial parent, she shall listen to and consider recommendations and suggestions of the Plaintiff with respect to the children. Neither party shall, by word or conduct, denigrate the other to or in the presence of the children and each party shall encourage an open, free and loving relationship between the children and the other party.

3. The Plaintiff shall pay to the Defendant as child support, for the use and benefit of the two (2) minor children, the sum of \$1,600.00 per month, commencing with the month of April 1992. Eight hundred dollars (\$800.00) thereof shall be payable on or before the 5th day of each month and the other \$800.00 shall be payable on or before the 20th day of each month. In addition to the child support herein provided for, the Plaintiff shall, for so long as he has a duty to pay child support, maintain insurance upon his life with unencumbered death benefits in the amount of \$150,000.00 payable at the option of the Plaintiff to the Defendant, the children, their guardian or a corporate trustee for the use and benefit of the children.

4. The Plaintiff shall maintain health and accident insurance for the use and benefit of the children. The Defendant shall pay all uninsured, routine medical and dental

expenses, including routine office visits, examinations and immunizations. The parties shall each pay one-half (1/2) of all other reasonable and necessary uninsured medical and dental expenses. The Plaintiff shall be entitled to take a credit against his child support obligation in an amount equal to the cost incurred by him in maintaining the health and accident insurance for the benefit of the children. The Plaintiff shall provide the Defendant with written verification by his employer establishing the cost incurred by the Plaintiff for maintaining health and accident insurance for the children only.

5. Commencing with the month of April 1992, the Plaintiff shall pay to the Defendant, as alimony, the sum of \$1,200.00 per month. Commencing with the month after the month in which the residential property referred to in paragraph 9 below is sold or with the month of October 1992 (whichever occurs first), the alimony herein provided for shall be increased to the sum of \$1,400.00 per month. One-half (1/2) of the alimony shall be payable on or before the 5th day of each month and one-half (1/2) shall be payable on or before the 20th day of each month. The alimony herein provided for shall terminate upon the first of the following events:

- a. The death of either party;

b. The remarriage of the Defendant;  
c. Cohabitation by the Defendant under circumstances that would cause alimony to be terminated in accordance with the laws of the State of Utah.

6. The alimony and child support herein provided for is premised and predicated upon current total gross compensation of the Plaintiff (including bonuses and car allowance) of \$150,120.00 per year and is further premised and predicated on the fact that while the Defendant is a trained, educated, qualified and certified school teacher, she is currently unemployed and presently has no income.

7. For each calendar year (commencing with calendar year 1992 and thereafter) that the Plaintiff has completely paid and discharged his obligation for child support, Plaintiff shall be entitled to take and claim the minor child, Dannie, as a dependent exemption deduction upon Plaintiff's federal and state income tax returns.

8. The parties shall cooperate with each other and the Defendant shall furnish information to the Plaintiff necessary to complete the 1991 federal and state income tax returns. If there is a net refund of both the federal and state income taxes, then fifty percent (50%) of the net refund shall

belong to the Plaintiff and fifty percent (50%) shall belong to the Defendant. If further federal and state taxes are due for calendar year 1991, the Plaintiff shall pay and discharge the same.

9. The residence of the parties at 11718 South Eureka Way, South Jordan, Utah, is awarded to the Plaintiff, who shall immediately list the same for sale with a real estate broker. Pending the sale of the subject property, the Defendant and the minor children shall reside therein and shall care for and maintain the premises. Commencing with the month of April 1992 and continuing through the month of September 1992, or until the property is sold (whichever occurs first), the Defendant shall pay upon the mortgage indebtedness on said property the sum of \$1,000.00 per month and the Plaintiff shall, each month during said time period, pay the balance of the mortgage payment. If the property has not been sold by the end of September 1992, then thereafter and commencing with the month of October 1992, the Defendant shall make the full monthly mortgage payment on said property until the same is sold. The award of the residential property is subject to the mortgage thereon which (except as otherwise provided herein), shall be

paid and discharged by the Plaintiff who shall save and hold the Defendant harmless therefrom.

10. The household furnishings, fixtures, appliances and personal property located in the residential property may be used by the Defendant and minor children for so long as they reside in the property. At such time as the Defendant vacates the property, the parties shall divide the furnishings, fixtures, appliances and personal property between them on an equal basis.

11. By a separately entered and appropriate Qualified Domestic Relation Order(s), there shall be divided equally between the parties, all pension, profit sharing, retirement, IRA, thrift plans, savings plans and other such benefits and plans in which the parties have an interest(s) and the value(s) thereof as of the date hereof.

12. There is awarded to the Defendant as her sole and separate property, her jewelry, clothing and personal effects, together with the 1990 Ford Bronco operated by the Defendant. The award to the Defendant of the motor vehicle herein described is subject to a debt thereon in the approximate amount of \$14,500.00 payable to Plaintiff's credit union at the rate of \$396.00 per month. Commencing with the month of April 1992, the



Defendant shall promptly pay, when due, the monthly payments to the credit union until said indebtedness has been discharged.

13. The Defendant shall pay and discharge all debts and liabilities incurred by her since the separation of the parties in May, 1991, and not otherwise provided for herein and she shall save and hold the Plaintiff harmless therefrom.

14. In addition to the family residence referred to in paragraph 9 above, the Plaintiff is awarded as his sole and separate property, the following specific assets:

- a. Approximately 2½ acres of undeveloped land in Price, Utah;
- b. A 1991 GMC operated by the Plaintiff, subject to the debt thereon in the approximate amount of \$19,000.00 which the Plaintiff shall pay and discharge;
- c. A 1989 Ford Bronco operated by the Plaintiff subject to the debt thereon in the approximate amount of \$10,800.00 which the Plaintiff shall pay and discharge;
- d. A horse identified as a 2 year old filly;
- e. A horse identified as D.B. Cooper;
- f. All of the tack and related equipment for the horses;
- g. The garden, power and hand tools;

h. U. S. Savings Bonds with a value of approximately \$600.00;

i. The Plaintiff's clothing, jewelry and personal effects;

j. A bonus and promotion payment recently received by the Plaintiff incident to his 1991 employment in the net sum of approximately \$12,000.00;

15. The Plaintiff shall pay and discharge the following additional debts and obligations and shall save and hold the Defendant harmless therefrom:

- |    |   |             |
|----|---|-------------|
| a. | K-plus loan no. 1 owing to Pacific Power  | (1,762.00)  |
| b. | K-plus loan no. 2 owing to Pacific Power  | (926.00)    |
| c. | Loan payable to Mr. and Mrs. Paul Baker   | (94,389.00) |
| d. | Loan payable to Pacific Power   | (6,700.00)  |
| e. | Payable to Dr. Hicks  | (560.00)    |
| f. | Payable to Olivette Furniture   | (2,000.00)  |
| g. | Plaintiff's attorney's fees and costs incurred in this action   |             |
| h. | Payable to Defendant's attorney in this action to apply upon attorney's fees and costs incurred by the Defendant in this action | (2,500.00)  |

- i. The Plaintiff shall pay and discharge all debts and liabilities incurred by him since the separation of the parties in May, 1991, and not otherwise provided for herein and he shall save and hold the Defendant harmless therefrom.

16. The parties are ordered and directed to take such action and make and execute all such documents and do such things as are necessary to implement the provisions hereof.

17. An Order to Withhold and Deliver Income shall be entered when, and if, Defendant becomes delinquent in his support obligation, and appropriate income withholding procedures shall apply to existing and future payors, and all withheld income shall be submitted to the Court, or to the Office of Recovery Services under the provisions of §62A-11-401 et seq., Utah Code Ann.

DATED this 16 day of April, 1992.

BY THE COURT

151  
David S. Young, Judge

APPROVED AS TO FORM:

/s/ Kellie F. Williams  
Kellie F. Williams  
Attorney for Defendant

        
Date

**PLAINTIFF'S EARNINGS AND PLAINTIFF'S SUGGESTED  
ALLOCATION AND UTILIZATION THEREOF**

Annual

Plaintiff's current gross annual income	
Includes car allowance of \$7,800 and average bonus	\$150,120.00
Less FICA withheld	(5,115.00)
Withholding for health and accident insurance	(468.00)
Withholding for accidental death	(210.00)
Withholding for dental insurance	(192.00)
Withholding for life insurance	(821.00)
Withholding for vision insurance	(120.00)
Car payment on GMC at \$452.00 per month	(5,424.00)
Car payment on Bronco at \$264.00 per month	(3,168.00)
Monthly payment to Olivette Furniture - \$200.00	(2,400.00)
Repayment of K-plus no. 1 loan @ \$135.00 per month	(1,620.00)
Repayment of K-plus no. 2 loan @ \$57.00 per month	(684.00)
Pay Dr. Hicks at \$25.00 per month	(300.00)
Payment to Paul Baker at \$750.00 per month	(12,000.00)
Pay Pacific Power at \$400.00 per month	(4,800.00)
Child support for two children at \$1,600.00 per month	<u>(19,284.00)</u>
Balance available for tax and support of the parties	\$ 93,514.00
Suggested alimony for Mrs. Baker at \$1,400.00 per month	(16,800.00)
Federal and state taxes payable by Mr. Baker calculated as follows:	
Gross income	\$150,120.00
Less alimony	(16,800.00)
Less 2 personal exemptions and itemized deductions	<u>(5,000.00)</u>
Taxable income	\$128,320.00
Federal and state tax at combined estimated rate	<u>          x.33</u>
Federal & state income tax	<u>(42,345.00)</u>
Net cash available for Mr. Baker	<u>(\$34,009.00)</u>
Monthly	\$ 2,834.00

	<u>Month</u>	<u>Annual</u>
Net cash for Mrs. Baker and children		
Child support	\$1,600.00	\$19,284.00
Alimony	<u>1,400.00</u>	<u>16,800.00</u>
	<u>\$3,000.00</u>	<u>\$36,084.00</u>

With alimony and child support at this level and with Mrs. Baker filing as head of household and taking the children as exemptions, she will not incur Federal or State income tax liabilities.

VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
James P. Cowley (0739)  
Attorneys for Plaintiff  
50 South Main Street, Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84145  
Telephone: (801) 532-3333

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DAN BAKER,	)	
	)	FINDINGS OF FACT AND
Plaintiff,	)	CONCLUSIONS OF LAW
	)	
vs.	)	
	)	Civil No. 914902633DA
LUJUANA BAKER,	)	
	)	Judge David S. Young
Defendant.	)	
	)	
	)	
	)	

---

The Plaintiff and the Defendant and their respective counsel appeared for trial before the Honorable David S. Young, Judge of the above-entitled Court at the hour of 8:00 a.m. on Thursday, March 26, 1992. The parties were sworn and testified. Exhibits were received. The parties entered into a stipulation on the record. Based on the foregoing and based upon the matters on file herein, the Court now makes and enters its

FINDINGS OF FACT

1. Plaintiff and Defendant are both actual and bonafide residents of Salt Lake County, State of Utah and were

for more than three (3) months immediately prior to the commencement of this action.

2. Plaintiff and Defendant were married to each other on June 8, 1970.

3. There are irreconcilable differences between the parties making a continuation of the marital relationship impossible.

4. Three (3) children have been born as issue of this marriage. One (1) of the children is beyond her eighteenth (18th) birthday. Two (2) of the children are minors and reside with the Defendant. Their names, birthdays and ages are as follows:

Camille Ann born Jan. 5, 1983, 9 years of age  
Dannie born December 6, 1983, 8 years of age

5. The Defendant is a good mother and the care, custody and control of the two (2) minor children should be awarded to the Defendant, reserving to the Plaintiff the right to visit with said children at all reasonable times and places.

6. The Plaintiff is employed and his current annual gross compensation, including car allowance and anticipated bonuses, is \$150,120.00. The Plaintiff has been the primary wage earner during the marriage. The parties' incomes for the previous years, including bonuses and relocation reimbursement,

are as follows: 1990 - \$169,248; 1989 - \$120,434; 1988 - \$111,715; 1987 - \$92,674; 1986 - \$76,149.

7. The Defendant is an educated, trained and qualified teacher in the Utah public school system and she is in good health. She last worked and last taught a full contract year for the school year 1989-1990. She has worked during the majority of the parties' marriage as a school teacher or secretary. She is currently uncertified, but can recertify upon completion of three (3) academic hours of training which she can readily obtain between now and the beginning of the 1992-1993 school year. The Defendant is currently unemployed and presently has no income.

8. The Defendant testified that her monthly expenses are \$4,800.00 per month, excluding her car payment which is \$396.00, for a total of \$5,196.00 per month. The Defendant testified that those expenses include the expenses attendant to herself, her two children, and the two grandchildren residing in her home. The expenses related to the two grandchildren are not relevant to, nor should they be considered in, the Court's award of alimony and child support.

9. Premised and predicated upon the total gross compensation of the Plaintiff (including bonuses and car



allowance) of \$150,120.00 and further premised and predicated upon the fact that the Defendant is currently unemployed and currently has no income, reasonable child support to be paid by Plaintiff to Defendant for the benefit of the two (2) children is \$1,600.00 per month. The income level of the Plaintiff exceeds the guideline amounts set forth in Utah Code Ann. §78-45-1 and the Court finds \$1,600.00 to be a reasonable sum. Given the Plaintiff's current income and the fact that the Defendant is not currently employed and is without income and given the debts and expenses of the parties, most of which must be paid by the Plaintiff and given the needs of the Plaintiff and the Defendant, reasonable alimony to be paid by the Plaintiff to the Defendant is \$1,400.00 per month.

10. The Plaintiff has available to him through his place of employment, health and accident insurance coverage for the benefit of the minor children.

11. The 1991 federal and state income tax returns have not been filed but it is to the benefit of the parties that they cooperate and file joint returns for calendar year 1991.

12. The Plaintiff has, or can obtain, insurance upon his life with unencumbered death benefits in the amount of \$150,000.00 and it is in the interest of the children that he do

so for purposes of providing support for the children in the event of Plaintiff's untimely death.

13. The assets and (liabilities) of the parties accumulated and incurred during the marriage and currently outstanding and an equitable division thereof is as follows:

<u>No.</u>	<u>Description</u>	<u>Mrs. Baker</u>	<u>Mr. Baker</u>
(a)	Residence at 11718 S. Eureka Way		\$183,000.00
(b)	Mortgage on residence		(143,000.00)
(c)	Household furnishings and fixtures at residence	\$15,000.00	15,000.00
(d)	2 3/4 acres in Price, Utah		6,000.00
(e)	1990 Ford Bronco operated by Mrs. Baker	17,000.00	
(f)	Purchase debt on 1990 Ford Bronco (14,500.00)		
(g)	1991 GMC operated by Mr. Baker		18,000.00
(h)	Purchase debt on 1991 GMC		(19,000.00)
(i)	1989 Ford Bronco		12,000.00
(j)	Purchase debt on 1989 Bronco		(10,800.00)
(k)	Horse - 2 year filly		2,000.00
(l)	Horse - D. B. Cooper		1,500.00
(m)	Garden, power & hand tools		2,000.00
(n)	Tack for horses		400.00
(o)	U. S. Savings Bonds		600.00

(p)	K-plus loan no. 1 owing to Pacific Power	(1,762.00)
(q)	K-plus loan no. 2 owing to Pacific Power	(926.00)
(r)	Loan payable to Plaintiff's parents	(94,389.00)
(s)	Loan payable to Pacific Power	(6,700.00)
(t)	Payable to Dr. Hicks	(560.00)
(u)	Payable to Olivette Furniture	(2,000.00)
(v)	Estimated attorney's fees for Mr. Baker	(2,500.00)
(w)	Estimated attorney's fees for Mrs. Baker	(2,500.00)
(x)	Clothing and personal effects each party - not valued -	<u>NV</u> <u>NV</u>
	NET VALUES	<u>\$17,500.00</u> <u>\$(43,637.00)</u>
(y)	Together with an equal division between the parties of all 401K, pension and retirement funds of both parties per appropriate Qualified Domestic Relations and other necessary orders.	

14. The obligation set forth in subparagraph (r) of paragraph 14 above, which is a loan repayable to the Plaintiff's parents in the amount of \$94,389.00 (which does not include any interest), is a marital debt of the parties which must be considered in the division of the marital estate and which accordingly reduces the marital net worth of the parties to a negative net worth. The debt was incurred from time to time

commencing in 1984 and some payments have been made thereon as evidenced by Defendant's Exhibit 3. Since Plaintiff is charged with the responsibility for repayment of that debt to Plaintiff's parents, the division of the marital net worth, as provided for in paragraph 14 above, leaves the Plaintiff with a negative net worth of \$43,637.00, while the assets being awarded to the Defendant have a positive net worth of \$17,500.00. The Court finds this imbalance to be necessary and equitable because the Plaintiff is the only party who has earnings with which the liabilities of the parties, as set forth in paragraph 14 above, can be paid.

15. While there was some evidence that Defendant's parents have, during the course of the marriage, provided some support to the Plaintiff and Defendant, there was no evidence that it was other than a gift and there was no evidence that Defendant's parents expected the repayment thereof.

16. At the time of trial, the Plaintiff had in his bank account the approximate sum of \$12,000.00 resulting from receipt by him of a recent bonus. The \$12,000.00 is not scheduled as a separate asset because it is part of and included in Plaintiff's income stream of \$150,120.00.

17. Because of the substantial debt of the parties and the resulting negative net worth, the parties cannot afford to maintain and make the mortgage payments on the residence at 11718 S. Eureka Way and the same must be sold at the earliest possible time. The parties stipulated that the marital residence has a value of \$183,000.00. Pending sale, it is reasonable that the Defendant be permitted temporary possession of said real property. The monthly mortgage obligation is approximately \$1,665.00. Pending sale, it is reasonable that the Defendant pay \$1,000.00 of that monthly mortgage obligation and the Plaintiff pay the balance of the mortgage until October 1, at which time, if the home is not yet sold, the Defendant should pay the entire mortgage obligation. During the period that the Plaintiff is contributing to the mortgage obligation, it is reasonable that the alimony be reduced to the rate of \$1,200.00 per month.

18. The parties stipulated (and the Court finds the stipulation reasonable) to the effect that Plaintiff would pay to the Defendant, for the use and benefit of her attorneys, an additional sum of \$2,500.00 which is in addition to the previous attorney's fees paid by the Plaintiff for the benefit and use of the Defendant in the amount of \$1,500.00.

19. The parties stipulated that commencing with calendar year 1992 and thereafter and for so long as Plaintiff has completely paid and discharged his obligation for child support, Plaintiff would be entitled to take and claim the minor child, Dannie, as a dependent exemption deduction upon Plaintiff's federal and state income tax returns and that Defendant would be entitled to take and claim the minor child, Camille Ann, as a dependent exemption deduction upon her federal and state income tax returns.

Based upon the foregoing facts, the Court now makes and enters its

#### CONCLUSIONS OF LAW

20. The parties are each entitled and should each be granted a Judgment and Decree divorcing each party from the other.

21. The Defendant should be granted the care, custody and control of the two (2) minor children who are issue of the marriage. There should be reserved to the Plaintiff, liberal and generous visitation rights.

22. The Court should make and enter its Judgment and Decree of Divorce and Order, consistent with and including and

embracing the matters that are set forth and implicit within the foregoing Findings of Fact and resulting equitably therefrom.

DATED this 16 day of <sup>April</sup>~~March~~, 1992.

BY THE COURT

15  
David S. Young, Judge

APPROVED AS TO FORM:

[Signature]  
Kellie F. Williams Date  
Attorney for Defendant

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# UTAH CODE

## 1987-1988

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### VOLUME 4

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other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state to enforce the unclaimed property laws of this state. This state shall pay all expenses including attorney's fees in any action under this subsection. The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. 1983

**78-44-36. Interest on delinquent delivery - Civil penalties - Criminal penalties.**

(1) A person who fails to pay or deliver property within the time prescribed by this chapter shall pay to the administrator interest at the annual rate of 2% above the local prime lending rate on the property or value thereof from the date the property should have been paid or delivered.

(2) A person who willfully fails to file any report, or perform a duty required under this chapter, or to pay or deliver property to the administrator as required under this chapter shall pay a civil penalty equal to 20% of the value of the property that should have been paid or delivered.

(3) A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under this chapter is guilty of a class B misdemeanor and upon conviction may be punished by a fine of not more than \$2,000. 1983

**78-44-37. Agreement to pay compensation to recover reported property unenforceable.**

All agreements to pay compensation to recover or assist in the recovery of property reported under section 78-44-18, made within 24 months after the date payment or delivery is made under section 78-44-20, are unenforceable. 1983

**78-44-38. Property in foreign country or from foreign transaction exempt.**

This chapter does not apply to any property held in a foreign country and arising out of a foreign transaction. 1983

**78-44-39. Duties under prior law - Property to be included in initial report.**

(1) This chapter does not relieve a holder of a duty to report, pay, or deliver property arising before July 1, 1983. Such holder who fails to comply before that date is subject to the applicable enforcement and penalty provisions in existence at that time and those provisions are continued in effect for the purpose of this subsection, subject to subsection 78-44-30(2).

(2) The initial report to be filed under this chapter for property that was not required to be reported before July 1, 1983, but which is subject to this chapter shall include all items of property that would have been presumed abandoned during the ten-year period prior to July 1, 1983, as if this chapter had been in effect during that period. 1983

**78-44-40. Application and construction of chapter.**

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. 1983

## Chapter 45. Uniform Civil Liability for Support Act

**78-45-1. Short title.**

**78-45-2. Definitions.**

**78-45-3. Duty of man.**

**78-45-4. Duty of woman.**

**78-45-4.1. Duty of stepparent to support stepchild -**

Effect of termination of marriage or common law relationship.

**78-45-4.2. Natural or adoptive parent has primary obligation of support - Right of stepparent to recover support.**

**78-45-4.3. Ward of state - Primary obligation to support.**

**78-45-5. Duty of obligor regardless of presence or residence of obligee.**

**78-45-6. District court jurisdiction.**

**78-45-7. Determination of amount of support -**

Assessment formula for temporary support.

**78-45-7.1. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage.**

**78-45-8. Continuing jurisdiction.**

**78-45-9. Enforcement of right of support.**

**78-45-9.1. Repealed.**

**78-45-9.2. County attorney to assist obligee.**

**78-45-10. Appeals.**

**78-45-11. Husband and wife privileged communication inapplicable - Competency of spouses.**

**78-45-12. Rights are in addition to those presently existing.**

**78-45-13. Interpretation and construction.**

**78-45-1. Short title.**

This act may be cited as the Uniform Civil Liability for Support Act. 1987

**78-45-2. Definitions.**

As used in this act:

(1) "State" includes any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(2) "Obligor" means any person owing a duty of support.

(3) "Obligee" means any person to whom a duty of support is owed.

(4) "Child" means a son or daughter under the age of 18 years and a son or daughter of whatever age who is incapacitated from earning a living and without sufficient means.

(5) "Parent" includes a natural parent, an adoptive parent, or a stepparent.

(6) "Stepparent" means a person ceremonially married to a child's natural or adoptive custodial parent who is not the child's natural or adoptive parent or one living with the natural or adoptive parents as a common law spouse, whose common law marriage was entered into in a state which recognizes the validity of common law marriages.

(7) "Stepchild" means any child with a stepparent.

(8) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically include periodic payment pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital assets. 1982

**78-45-3. Duty of man.**

Every man shall support his child; and he shall support his wife when she is in need. 1977

**78-45-4. Duty of woman.**

Every woman shall support her child; and she shall support her husband when he is in need. 1957

**78-45-4.1 Duty of stepparent to support stepchild**

- Effect of termination of marriage or common law relationship.

A stepparent shall support a stepchild to the same extent that a natural or adoptive parent is required to support a child. Provided, however, that upon the termination of the marriage or common law relationship between the stepparent and the child's natural or adoptive parent the support obligation shall terminate. 1980

**78-45-4.2. Natural or adoptive parent has primary obligation of support - Right of stepparent to recover support.**

Nothing contained herein shall act to relieve the natural parent or adoptive parent of the primary obligation of support; furthermore, a stepparent has the same right to recover support for a stepchild from the natural or adoptive parent as any other obligee. 1979

**78-45-4.3. Ward of state - Primary obligation to support.**

Notwithstanding section 78-45-2, a natural or an adoptive parent or stepparent whose minor child has become a ward of the state is not relieved of the primary obligation to support that child until he reaches the age of majority. 1983

**78-45-5. Duty of obligor regardless of presence or residence of obligee.**

An obligor present or resident in this state has the duty of support as defined in this act regardless of the presence or residence of the obligee. 1957

**78-45-6. District court jurisdiction.**

The district court shall have jurisdiction of all proceedings brought under this act. 1957

**78-45-7. Determination of amount of support - Assessment formula for temporary support.**

(1) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee.

(2) When no prior court order exists, or a material change in circumstances has occurred, the court in determining the amount of prospective support, shall consider all relevant factors including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

(3) When no prior court order exists, the court shall determine and assess all arrearages based upon, but not limited to:

- (a) the amount of public assistance received by the obligee, if any;
- (b) the funds that have been reasonably and necessarily expended in support of spouse and children.

(4) In determining the amount of prospective support on an ex parte or other motion for temporary support, the court shall use a uniform statewide assessment formula, adjusted for regional differences, prior to rendering the support order. The

formula shall provide for all relevant factors which can be readily identified and shall allow for reasonable deductions from the obligor's earnings for taxes, work related expenses, and living expenses. The assessment formula shall be established by the Department of Social Services and periodically reviewed by the Judicial Council under Subsection 78-3-21(3). 1984

**78-45-7.1. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage.**

When no prior court order exists or the prior court order makes no specific provision for the payment of medical and dental expenses for dependent children, the court shall include in its order a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses for the dependent children. If coverage is available at a reasonable cost, the court may also include a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children. 1984

**78-45-8. Continuing jurisdiction.**

The court shall retain jurisdiction to modify or vacate the order of support where justice requires. 1957

**78-45-9. Enforcement of right of support.**

(1) The obligee may enforce his right of support against the obligor and the state department of social services may proceed pursuant to this act or any other applicable statute, either on its own behalf or on behalf of the obligee, to enforce the obligee's right of support against the obligor. Whenever any court action is commenced by the state department of social services to enforce payment of the obligor's support obligation, it shall be the duty of the attorney general or the county attorney, of the county of residence of the obligee, to represent that department.

(2) No obligee shall commence any action to recover support due or owing that obligee whether under this act or any other applicable statute without first filing an affidavit with the court at the time the action is commenced stating whether that obligee has received public assistance from any source. If the obligee has received public assistance, the obligee shall join the department of social services as a party plaintiff in the action. The department of social services shall be represented as provided in subsection (1) of this section. 1982

**78-45-9.1. Repealed.****78-45-9.2. County attorney to assist obligee.**

The county attorney's office shall provide assistance to an obligee desiring to proceed under this act in the following manner:

- (1) Provide forms, approved by the judicial council of Utah, for an order of wage assignment if the obligee is not represented by legal counsel;
- (2) The county attorney's office may charge a fee not to exceed \$25 for providing assistance to an obligee under subsection (1).
- (3) Inform the obligee of the right to file impecuniously if the obligee is unable to bear the expenses of the action and assist the obligee with such filing;
- (4) Advise the obligee of the available methods for service of process; and
- (5) Assist the obligee in expeditiously scheduling a hearing before the court. 1983

**78-45-10. Appeals.**

Appeals may be taken from orders and judgments under this act as in other civil actions. 1957

**78-45-11. Husband communication is spouse.**

Laws attaching to communications inapplicable under witnesses to testify marriage and parent

**78-45-12. Rights an presently existing**

The rights herein not in substitution

**78-45-13. Interpret**

This act shall be to effectuate its law of those stat

**Chapter 45a. U****78-45a-1. Obligations****78-45a-2. Enforcement****78-45a-3. Limitation****78-45a-4. Limitation****78-45a-5. Remedies****78-45a-6. Time of trial****78-45a-7. Authority****78-45a-8. Selection of****78-45a-9. Compensat****78-45a-10. Effect of****78-45a-11. Judgment****78-45a-12. Security****78-45a-13. Settlement****78-45a-14. Venue****78-45a-15. Uniformity****78-45a-16. Short title****78-45a-17. Operation****78-45a-1. Obligation**

The father of a of wedlock is liable of a child born in is born alive, for mother's pregnancy education, necessity of the child. A child born to a man her husband.

**78-45a-2. Enforcement**

Paternity may be the mother, child, by law with the s has been determi

according to the li the father may be proceedings (1) by authority which h

reasonable expen education, necessa and (2) by other j

to the extent that t expenses of preg necessary support,

78-45a-3. Limitatio The father's li

necessary support, years next preced action.

78-45a-4. Limitatio estate.

The obligation bilities under this prior to his death

**78-45-11. Husband and wife privileged communication inapplicable - Competency of spouses.**

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this act. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage. 1957

**78-45-12. Rights are in addition to those presently existing.**

The rights herein created are in addition to and not in substitution to any other rights. 1957

**78-45-13. Interpretation and construction.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. 1957

**Chapter 45a. Uniform Act on Paternity**

**78-45a-1. Obligations of the father.**

**78-45a-2. Enforcement.**

**78-45a-3. Limitation on recovery from the father.**

**78-45a-4. Limitations on recovery from father's estate.**

**78-45a-5. Remedies.**

**78-45a-6. Time of trial.**

**78-45a-7. Authority for blood tests.**

**78-45a-8. Selection of experts.**

**78-45a-9. Compensation of expert witnesses.**

**78-45a-10. Effect of test results.**

**78-45a-11. Judgment.**

**78-45a-12. Security.**

**78-45a-13. Settlement agreements.**

**78-45a-14. Venue.**

**78-45a-15. Uniformity of interpretation.**

**78-45a-16. Short title.**

**78-45a-17. Operation of act.**

**78-45a-1. Obligations of the father.**

The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child. A child born out of wedlock includes a child born to a married woman by a man other than her husband. 1965

**78-45a-2. Enforcement.**

Paternity may be determined upon the petition of the mother, child, or the public authority chargeable by law with the support of the child. If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the father may be enforced in the same or other proceedings (1) by the mother, child, or the public authority which have furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses, and (2) by other persons including private agencies to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses. 1965

**78-45a-3. Limitation on recovery from the father.**

The father's liabilities for past education and necessary support are limited to a period of four years next preceding the commencement of an action. 1965

**78-45a-4. Limitations on recovery from father's estate.**

The obligation of the estate of the father for liabilities under this act are limited to amounts accrued prior to his death and such sums as may be payable

for dependency under other laws. 1965

**78-45a-5. Remedies.**

(1) The district court has jurisdiction of an action under this act and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under the Uniform Reciprocal Enforcement of Support Act, are available for enforcement of duties of support under this act.

(2) The obligee may enforce his right of support against the obligor and the state department of social services may proceed on behalf of the obligee or in his own behalf pursuant to the provisions of chapter 45b of this title to enforce that right of support against the obligor. In such actions by the department, all the provisions of chapter 45b of this title shall be equally applicable to this chapter. Whenever a court action is commenced by the state department of social services, it shall be the duty of the attorney general or the county attorney, of the county of residence of the obligee, to represent that department. 1975

**78-45a-6. Time of trial.**

If the issue of paternity is raised in action commenced during the pregnancy of the mother, the trial shall not, without the consent of the alleged father, be held until after the birth or miscarriage but during such delay testimony may be perpetrated according to the laws of this state. 1965

**78-45a-7. Authority for blood tests.**

The court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require. 1965

**78-45a-8. Selection of experts.**

The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of court, the results of which may be offered in evidence. The number and qualifications of such experts shall be determined by the court. 1965

**78-45a-9. Compensation of expert witnesses.**

The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action. 1965

**78-45a-10. Effect of test results.**

If the court finds that the conclusions of all experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of

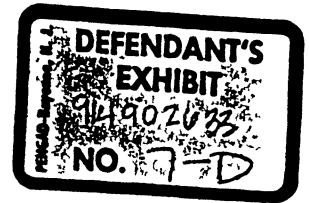
STATEMENT OF ASSETS & (LIABILITIES)  
AND  
PLAINTIFF'S SUGGESTED DIVISION THEREOF

<u>Item No.</u>	<u>Description</u>	<u>Mrs. Baker</u>	<u>Mr. Baker</u>
1.	Residence at 11718 S. Eureka Way		\$183,000.00
2.	Mortgage on residence		(143,000.00)
3.	Household furnishings and fixtures at residence	\$15,000.00	15,000.00
4.	2 3/4 acres in Price, Utah		6,000.00
5.	1990 Ford Bronco operated by Mrs. Baker	17,000.00	
6.	Purchase debt on 1990 Ford Bronco (14,500.00)		
7.	1991 GMC operated by Mr. Baker		18,000.00
8.	Purchase debt on 1991 GMC		(19,000.00)
9.	1989 Ford Bronco		12,000.00
10.	Purchase debt on 1989 Bronco		(10,800.00)
11.	Horse - 2 year filly		2,000.00
12.	Horse - D.B. Cooper		1,500.00
13.	Garden, power & hand tools		2,000.00
14.	Tack for horses		400.00
15.	U.S. Savings Bonds		600.00
16.	K-plus loan no. 1 owing to Pacific Power		(1,762.00)
17.	K-plus loan no. 2 owing to Pacific Power		(926.00)
18.	Loan payable to Plaintiff's parents		(94,389.00)
19.	Loan payable to Pacific Power		(6,700.00)
20.	Payable to Dr. Hicks		(560.00)
21.	Payable to Olivette Furniture		(2,000.00)

22.	Estimated attorney's fees for Mr. Baker		(2,500.00)
23.	Estimated attorney's fees for Mrs. Baker		(2,500.00)
24.	Loan payable to Defendant's parents	(33,000.00)	
25.	Clothing and personal effects each party - not valued -	<u>NV</u>	<u>NV</u>
	NET VALUES	<u>(\$15,500.00)</u>	<u>\$(43,637.00)</u>

Together with an equal division of all 401K, pension and retirement funds of both parties per appropriate Qualified Domestic Relations and other orders.

DAN BAKER v. LUJUANA BAKER



**SCHEDULE OF MARITAL ASSETS  
and  
PLAINTIFF'S PROPOSED PROPERTY DISTRIBUTION**

ASSETS:	ESTIMATED FAIR MARKET VALUE	PROPOSED DISTRIBUTION	
		PLAINTIFF	DEFENDANT
<u>Real Estate</u>			
11718 S. Eureka Way	\$ 183,000	\$ --	\$ 183,000
Price acreage	6,000	3,000	3,000
<u>Retirement Accounts</u>			
401(k) and ESOP	\$ 60,000*	\$ 32,199	\$ 27,801
<u>Other Assets</u>			
Household Furnishings	\$ 30,000	\$ 15,000	\$ 15,000
Power and Hand Tools	2,000	2,000	--
Motor Vehicles			
1989 Ford Bronco	11,150	11,150	--
1990 Ford Bronco	12,400	--	12,400
1991 GMC	19,000	19,000	--
Horses (2)	3,500	3,500	--
Tack	400	400	--
U.S. Savings Bonds	800	400	400
<b>SUBTOTAL MARITAL ASSETS:</b>	<b>\$ 328,250</b>	<b>\$ 85,649</b>	<b>\$ 242,601</b>
Plaintiff's Lien on Eureka Way		\$ 20,000	(\$ 20,000)
<b>SUBTOTAL MARITAL ASSETS:</b>	<b>\$ 328,250</b>	<b>\$ 106,649</b>	<b>\$ 221,601</b>
<b>LIABILITIES:</b>			
Mortgage (Eureka Way)	\$ 143,000	\$ --	\$ 143,000
1989 Bronco	11,600	11,600	--
1990 Bronco	14,000	--	14,000
GMC	18,500	18,500	--
K Plus Loan 1	1,762	1,762	--
K Plus Loan 2	926	926	--
Pacific Power	6,700	6,700	--
Dr. Hicks	560	560	--
Olivette Furniture	2,000	2,000	--
<b>SUBTOTAL LIABILITIES:</b>	<b>(\$ 199,048)</b>	<b>(\$ 42,048)</b>	<b>(\$ 157,000)</b>
<b>NET MARITAL ASSETS:</b>	<b>\$ 131,202</b>	<b>\$ 64,601</b>	<b>\$ 64,601</b>

\* approximate value, funds to be used to equalize distribution of marital estate

Each party to pay debts incurred in his or her own name since separation

Each party to pay any debts associated with his or her parents

BAKER vs. BAKER  
Civil No. 914902633DA

PAUL BAKER LOAN  
Payment History

<u>DATE</u>	<u>AMOUNT</u>
07/01/84	\$ 125.00
07/15/84	\$ 125.00
08/01/84	\$ 125.00
08/01/84	\$ 300.00
08/16/84	\$ 125.00
09/10/84	\$ 200.00
09/29/84	\$ 125.00
10/20/84	\$ 125.00
11/10/84	\$ 125.00
11/20/84	\$ 125.00
11/22/84	\$ 250.00
01/14/85	\$ 250.00
03/16/85	\$ 125.00
11/01/87	\$ 400.00
12/01/87	\$ 300.00
02/07/88	\$ 300.00
03/08/88	\$ 300.00
12/30/91	\$ 500.00
18 payments @	TOTAL: \$3,925.00
Loan begin date	02/15/84
Loan total borrowed	\$98,314.00
Loan balance	\$94,398.00